



4000-01-U

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

[Docket ID ED-2016-OGC-0129]

AGENCY: Office of General Counsel, Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Education (the Department) publishes this notice of a modified system of records entitled "Department of Education Federal Docket Management System (EDFDMS) (18-09-05)." EDFDMS contains individually identifying information voluntarily provided by individuals who submit public comments on the Department's rulemaking documents that are in the Federal Docket Management System (FDMS). FDMS is an interagency system that allows the public to search, view, download, and comment on Federal agency rulemaking documents through a single online system. The public accesses the FDMS Web portal at <http://www.regulations.gov>.

DATES: Submit your comments on this modified system of records notice on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

The Department filed a report describing the modified system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Deputy Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on March 29, 2017. This modified system of records will become effective upon publication in the Federal Register on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the modified system of records notice needs to be changed as a result of public comment. Newly proposed routine use (10) in the paragraph entitled "ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES" will become effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the modified system of records notice needs to be changed as a result of public comment. The Department will publish any significant changes resulting from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies,

please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the "help" tab.

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about this modified system of records, address them to: Hilary Malawer, Assistant General Counsel, Regulatory Services Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6110

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate aid, such as a reader or print magnifier, to an

individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Hilary Malawer, Assistant General Counsel, Regulatory Services Division, Office of the General Counsel. Telephone: (202) 401-6148.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Introduction: The Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), requires the Department to publish in the Federal Register this notice of a modified system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b. The Privacy Act applies to information about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a "record," and the system, whether manual or computer-based, is called a

"system of records." The Privacy Act requires each agency to publish notices of systems of records in the Federal Register and to prepare reports for OMB whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies to the Chair of the Senate Committee on Governmental Affairs and the Chair of the House Committee on Government Reform. These reports are intended to permit an evaluation of the probable or potential effect of the proposal on the privacy or other rights of individuals.

The Department of Education Federal Docket Management System (EDFDMS) (18-09-05) system of records was last published in the Federal Register on November 27, 2007 (72 FR 66155). The system is being modified to provide a more precise description of the purpose of this system of records, which is to facilitate public participation in the rulemaking process through electronic means. The system is also being modified to update how the information is stored utilizing updated security hardware and software, including multiple firewalls, active intruder detection, and role-based access controls. The retention and disposition schedule is also being updated to reflect the specific Department records schedule related to this system.

The Department also proposes to add to this system of records notice a new routine use (10) entitled "Disclosure in Assisting another Agency in Responding to a Breach of Data". This will allow the Department to disclose records in this system to another Federal agency or entity in order to assist the recipient agency in responding to a suspected or confirmed breach of data.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of the Department published in the Federal Register, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the Federal Register by using the article search feature

at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 28, 2017.

Phillip H. Rosenfelt,
Acting General Counsel.

SYSTEM NAME AND NUMBER:

Department of Education Federal Docket Management
System (EDFDMS) (18-09-05).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The central location is at the U.S. Environmental
Protection Agency, Research Triangle Park, NC 27711-0001.
Access is available through the Internet from other
locations.

SYSTEM MANAGER:

Assistant General Counsel, Regulatory Services
Division, Office of the General Counsel, U.S. Department of
Education, 400 Maryland Avenue, SW., Washington, DC 20202-
6110.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 206(d) of the E-Government Act of 2002 (Pub.
L. 107-347, 44 U.S.C. 3501 note); 20 U.S.C. 3474; 20 U.S.C.
1221e-3; 5 U.S.C. 301; and 5 U.S.C. 553.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to provide
the public a central online location to search, view,
download, and comment on Federal rulemaking documents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on individuals who voluntarily provide individually identifying information when submitting a public comment or supporting materials in response to a Department of Education (Department) rulemaking document or notice in the Federal Docket Management System (FDMS) are covered by this system. Although this system may also contain information on and public comments submitted by representatives of governmental or organizational entities, the purpose for which the Department is establishing this system of records is only to cover individuals protected under the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a(a)(2)).

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system include: first name, last name, category (such as parent/relative, student, teacher, local educational agency, or lender), city, country, State or province, email address, organization name, submitter's representative, government agency type, government agency, additional information provided in the "General Comments" section, and other supporting documentation furnished by the submitter.

RECORD SOURCE CATEGORIES:

Information maintained in this system of records is obtained from anyone who chooses to voluntarily submit a public comment or supporting materials in response to a Department rulemaking document or notice, including individuals and representatives of Federal, State or local governments, businesses, and other organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Disclosure to the Public.* With few exceptions, the Department may disclose information in EDFDMS to any member of the public. EDFDMS permits members of the public to search the public comments that are received by the Department and included in FDMS by the name of the individual submitting the comment. Unless the individual submits a comment anonymously, a full-text search, using

the individual's name, will generally result in the comment and the commenter's information being displayed for view. With few exceptions, comments that are submitted using the FDMS system will include any information that the commenter provided when submitting the comment. In addition, with few exceptions, comments that are submitted in writing and then scanned and uploaded into the FDMS system will include any identifying information about the submitter that is provided in the written comment. If a commenter provides individually identifying information about a third party, a full-text search using the third party's name, with some exceptions, will result in the third party's information being displayed for view.

Note: Identification of an individual commenter or third party is possible only if the commenter voluntarily provides his or her name or contact information, or that of a third party. If this information is not furnished, the submitted comments or supporting documentation cannot be linked to the commenter or a third party.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or

criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components.

(ii) Any Department employee in his or her official capacity.

(iii) Any Department employee in his or her individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation for the employee.

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee.

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to the litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear, to an individual, or to an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a

routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to parties, counsels, representatives, or witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(6) *Disclosure to DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(7) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such

a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(8) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested the inquiry.

(9) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed beach or to prevent, minimize, or remedy such harm.

(10) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

EDFDMS security protocols meet all required security standards issued by the National Institute of Standards and Technology (NIST). Records in EDFDMS are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

EDFDMS enables record retrieval by various data elements and key word searches. These data elements are:

document identification number, comment tracking number, document title, Code of Federal Regulation (CFR) (search for a specific title within the CFR), CFR citation (search for the part or parts within the CFR title being searched), document type, document sub type, date posted, and comment period end date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records in this system will be retained and disposed of in accordance with the Department's Record Schedule ED 253 - Rulemaking Case Files. Under ED 253 part C, Notices of Proposed Rulemaking, Public Comments, and Negotiated Rulemaking Records, records are temporary. The date to start the clock for record-keeping purposes is December 31 of the year in which the final rule was published. Records in this system will be destroyed/deleted five years after publication.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

As discussed above in routine use (1), *Disclosure to the Public*, any member of the public who accesses FDMS through <http://www.regulations.gov> and searches the comments associated with the Department's rulemakings can view EDFDMS records that are included in FDMS.

To the extent paper records from this system of records are maintained, they will be maintained in a controlled facility where physical entry is restricted by locks, guards, and administrative procedures.

Access to electronic and paper EDFDMS records that are not otherwise available to the public through FDMS is limited to those Department and contract staff who require the records to perform their official duties consistent with the purposes for which the information was collected. Personnel whose official duties require access to either electronic or written EDFDMS records that are not otherwise available to the public through FDMS are trained in the proper safeguarding and use of the information.

RECORD ACCESS PROCEDURES:

If you wish to request access to your records, you should contact the system manager at the address listed under SYSTEM MANAGER AND ADDRESS. Requests should contain your full name, address, and telephone number. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system

manager. Your request must meet the requirements of the regulations in 34 CFR 5b.7, including proof of identity.

NOTIFICATION PROCEDURE:

If you wish to inquire whether a record exists regarding you in this system, you should contact the system manager at the address listed above. You must provide your full name, address, and telephone number. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The Department of Education Federal Docket Management System (EDFDMS) (18-09-05) system of records was last published in the Federal Register on November 27, 2007 (72 FR 66155).

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